

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE J. VERA MARTINEZ,

Petitioner,

v.

WARDEN, FCI-MENDOTA,

Respondent.

No. 1:22-cv-01282-ADAD-SKO (HC)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS  
(ECF No. 11)

ORDER DISMISSING PETITION FOR WRIT  
OF HABEAS CORPUS

ORDER DIRECTING CLERK OF COURT TO  
ENTER JUDGMENT AND CLOSE CASE

ORDER DECLINING TO ISSUE  
CERTIFICATE OF APPEALABILITY

Petitioner Jose J. Vera Martinez ("Petitioner") a federal prisoner proceeding *pro se* and *in forma pauperis* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On December 20, 2022, the assigned Magistrate Judge issued findings and recommendations to dismiss the petition for lack of jurisdiction. (ECF No. 11.) Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. On January 9, 2023, Petitioner filed objections to the findings and recommendations. (ECF No. 12.)

1 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the Court has conducted a  
 2 *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's  
 3 objections, the Court concludes that the Magistrate Judge's findings and recommendations are  
 4 supported by the record and proper analysis. Petitioner's objections present no grounds for  
 5 questioning the Magistrate Judge's analysis.

6 In addition, the court declines to issue a certificate of appealability. A prisoner seeking a  
 7 writ of habeas corpus has no absolute entitlement to appeal a district court's denial of his petition,  
 8 and an appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-  
 9 336 (2003). Further, a certificate of appealability is required for a successive § 2255 motion that  
 10 is disguised as a § 2241 petition. *Harrison v. Ollison*, 519 F.3d 952, 958 (9th Cir. 2008); *Porter v.*  
 11 *Adams*, 244 F.3d 1006, 1007 (9th Cir. 2001). The controlling statute in determining whether to  
 12 issue a certificate of appealability is 28 U.S.C. § 2253, which provides as follows:

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 14 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a  
 15 district judge, the final order shall be subject to review, on appeal, by the court of  
 appeals for the circuit in which the proceeding is held.

16 (b) There shall be no right of appeal from a final order in a proceeding to test  
 17 the validity of a warrant to remove to another district or place for commitment or  
 18 trial a person charged with a criminal offense against the United States, or to test the  
 validity of such person's detention pending removal proceedings.

19 (c) (1) Unless a circuit justice or judge issues a certificate of appealability, an  
 20 appeal may not be taken to the court of appeals from—

21 (A) the final order in a habeas corpus proceeding in which the  
 22 detention complained of arises out of process issued by a State court;  
 or

23 (B) the final order in a proceeding under section 2255.

24 (2) A certificate of appealability may issue under paragraph (1) only if the  
 25 applicant has made a substantial showing of the denial of a constitutional  
 right.

26 (3) The certificate of appealability under paragraph (1) shall indicate which  
 27 specific issue or issues satisfy the showing required by paragraph (2).  
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1 If a court denies a Petitioner's petition, the court may only issue a certificate of appealability  
2 when a Petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §  
3 2253(c)(2). To make a substantial showing, the Petitioner must establish that "reasonable jurists  
4 could debate whether (or, for that matter, agree that) the petition should have been resolved in a  
5 different manner or that the issues presented were 'adequate to deserve encouragement to proceed  
6 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880,  
7 893 (1983)).

8 In the present case, the Court finds that Petitioner has not made the required substantial  
9 showing of the denial of a constitutional right to justify the issuance of a certificate of appealability.  
10 Reasonable jurists would not find the Court's determination that Petitioner is not entitled to federal  
11 habeas corpus relief debatable, wrong, or deserving of encouragement to proceed further. Thus,  
12 the Court declines to issue a certificate of appealability.

13 Accordingly,

- 14 1. The findings and recommendations issued on December 20, 2022, (ECF No. 11),  
15 are adopted in full;
- 16 2. The petition for writ of habeas corpus is dismissed with prejudice;
- 17 3. The Clerk of the Court is directed to enter judgment and close the case; and
- 18 4. The Court declines to issue a certificate of appealability. This order terminates the  
19 action in its entirety.

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22 IT IS SO ORDERED.

23 Dated: February 14, 2023

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UNITED STATES DISTRICT JUDGE